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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MASHONE BONNER,

Defendant and Appellant.

G033360

(Super. Ct. No. 03CF1582)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert D. Monarch, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Betty A. Haight, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Michael T. Murphy, Melissa A. Mandel, and Bradley A. Weinreb, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Mashone Bonner of possession for sale of cocaine base (Health & Saf. Code, § 11351.5). During trial, at the conclusion of the prosecution's case-in-chief, defense counsel moved for acquittal (Pen. Code, § 1118.1) on the basis that there was insufficient evidence to show defendant possessed the drug for purposes of sale. The court denied the motion, and defendant now contends on appeal that the court erred. We disagree and affirm the judgment.

In reviewing the denial of a motion for acquittal we “assume in favor of [the court's] order the existence of every fact from which the jury could have reasonably deduced from the evidence whether the offense charged was committed and if it was perpetrated by the person or persons accused of the offense. [Citations.]” (*People v. Wong* (1973) 35 Cal.App.3d 812, 828.) We will not reverse “unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reach by the court below. [Citation.]” (*Ibid.*)

To prove defendant possessed a controlled substance for sale, the prosecutor had to show ““defendant possessed the contraband with the intent of selling it and with knowledge of both its presence and illegal character. [Citation.]’ [Citation.] ” (*People v. Harris* (2000) 83 Cal.App.4th 371, 374.) Such proof may be “established by circumstantial evidence and any reasonable inferences drawn from such evidence. [Citations.]” (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1746.)

The prosecution's case primarily consisted of the testimony of the two officers who arrested defendant and a stipulation that the substance found in his possession was cocaine base weighing 5.02 grams. Officer O'Conner testified he frequently patrolled an area of Santiago Park where defendant and other transients had been camping beneath a bridge. Based on his previous contacts with defendant, O'Conner knew defendant had a cell phone, which was an unusual item for a transient to possess.

On the day of defendant's arrest, O'Conner, Officer Anzai, and two park rangers were investigating narcotics activity. O'Conner viewed the area where defendant kept his bedding from a hidden vantage point and observed defendant standing at the foot of his bedding speaking with two other individuals. The trio saw Anzai and a park ranger approaching from another direction and walked over to meet them. O'Conner stealthily climbed over a small retainer wall and walked over to defendant's bedding where he observed an "off-white . . . kind of . . . rock type substance . . . as well as smaller pieces of the same substance" lying on top of a magazine. O'Conner also saw a shopping bag and a razor blade next to the substance. Defendant's cell phone was lying on the ground near his bedding. Once defendant had been detained, Anzai found a glass pipe in his knapsack. The pipe was the type used for smoking narcotics. Over a period of two to three hours, approximately 30 incoming calls were made to the cell phone from at least 20 different numbers. Defendant had \$70 in his possession.

At trial, Anzai testified that, based on his experience and training, the amount of cocaine base found on defendant's bedding had a street value of between \$500 and \$600. Anzai explained the razor blade could be used to cut the larger piece of the narcotic into smaller pieces and the shopping bag could be used for packaging up the smaller pieces in bindles to then be sold. The entire weight of the substance found was over five grams, and Anzai testified that a typical user would consume one-tenth of a gram per sitting. These facts, combined with defendant's possession of a cell phone, caused Anzai to believe defendant possessed the cocaine base with the intent to sell it. He further testified that it is common for a person to support their own drug habit by selling. And, in his opinion, an addict would not use as much as five grams of cocaine base in a week.

Defendant argues Anzai's opinion that he possessed the cocaine base for sale did not constitute sufficient evidence to support the charge against him. He further contends that the absence of other items typically possessed by narcotics sellers, i.e., a

scale, pay/owe sheets, a cutting agent, a firearm, and a large amount of cash, made it unreasonable for the jury to infer from Anzai's testimony that he possessed the drug for sale. In addition, he argues there was no evidence to show the unanswered cell phone calls were connected to a narcotics transaction.

It is settled that “‘experienced officers may give their opinion that the narcotics are held for purposes of sale based upon such matters as the quantity, packaging and normal use of an individual; on the basis of such testimony convictions of possession for purpose of sale have been upheld. . . .’” (*People v. Carter* (1997) 55 Cal.App.4th 1376, 1378.) Here, the prosecution's evidence showed defendant had been in the process of cutting the larger piece of cocaine base into smaller pieces, he had packaging material close by, and his cell phone rang with unusual frequency. This tangible evidence in combination with the officer's expert opinion that defendant possessed the cocaine base for sale constituted ample evidence to support the court's ruling denying the motion for acquittal.

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.